INTERNATIONAL ENFORCEMENT OF HUMAN RIGHTS: POTENCY AND STRATEGIES

Mohammad Rasikh Wasiq, LLM (International Law) ILS Law College, Pune

ABSTRACT

Humans have the same dignity and rights as other creatures from the moment they are born. They have reason and conscience, and they should treat each other with brotherly affection." At their most fundamental level, human rights are a product of democracy. In general, humanity's fight against authoritarianism and injustice has been lengthy and unending. Throughout history, tyranny has taken on many different forms and strategies. Man has sought to secure his rights several times; occasionally he has failed horribly, and the assault on human rights continues. Man's struggle against oppression is analogous. The true notion of human rights and its enforcement began to take shape in the west during this age only during the Renaissance and the industrialization process. The Treaty Bodies associated with the current seven active treaties, as well as the Human Rights Council complaints procedures, are examples of them. It is the role of the Nation-State to enforce international human rights law, and it is the State's primary responsibility to make human rights a reality. Many human rights are difficult to enforce legally in practice due to a lack of consensus on how to apply them, as well as a lack of relevant national legislation or agencies with the authority to take legal action to enforce them. This study aims to address the numerous dimensions of human rights protection, including its legal, social, political, and economic aspects.

Keywords: Human Rights, International Human Rights, International law enforcement

Electronic copy available at: https://ssrn.com/abstract=4221073

1.0 INTRODUCTION

Human Rights can be located in the notion of 'Natural Rights' that was propounded in the seventeenth century by philosopher John Locke who urged that certain rights are 'Natural' to individuals as human beings have existed even in the 'State of Nature' before the development of societies and emergence of the State. The American Independence Movement of 1776 & French Revolution of 1789 were inspired by the idea of natural rights & both movements were sought to challenge governments that curtailed the natural rights of people.[1] The Preamble to the American Declaration of Independence, 1776 says: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, among these are Life, Liberty, and the pursuit of Happiness. To secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, that whenever any Form of Government becomes destructive of these ends, it is the Right of the people to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness"[2].

While the focus since 9/11 in developed countries has been on state security and combating acts of terrorism, millions of other people on the planet have continued to be at daily risk from violence, disease, and abject poverty.[3] Their insecurity stems from worry about where the next meal will come from, how to acquire medicines for dying child, how to avoid the criminal with a gun, how to manage the household as a ten year old AIDS' orphan theirs is the comprehensive insecurity of the powerless. The focus aims at ways in which the strengths, resources, and support of the international human rights and development communities can be mobilized to reinforce one another in their efforts to achieve shared goals.[4]

Human rights have evolved and developed as a reaction to oppressive institutions, policies, and practices. Second and third-generation rights are discerned to be a response to economic and political oppression that was the by-product of colonialism and industrial capitalism. The proponent of the classification of rights into three generations was Karel Vasek, a former

[1] Sayed Qudrat Hashimy, *THE RECOGNITION AND LEGITIMACY OF THE TALIBAN GOVERNMENT: A CONUNDRUM IN INTERNATIONAL LAW*, 28.
[2] The American Declaration of Independence, 1776 available at http://www.ushistory.org/declaration/document/index.htm. (Accessed on 4th March 2022).
[3] Sayed Hashimy, Jackson Magoge & Ahsnat Mokarim, *Relentless Violation of International Humanitarian Law During the Ongoing Conflict in Afghanistan*, 9 SSRN ELECTRONIC JOURNAL 12 (2022).
[4] Hashimy, *supra* note 2 at 15.

Electronic copy available at: https://ssrn.com/abstract=4221073

Director of the Human Rights and Peace Division of the United Nations Educational, Scientific, and Cultural Organization (UNESCO). He stated that civil and political rights constitute the first tier followed by social, economic, and cultural rights.[5] Finally, group rights, such as the right to development and environmental rights, formed the third generation of rights.

The Vienna Declaration and Programme of Action, the result of the 1993 World Conference on Human Rights, asserted that 'all human rights are universal, indivisible, interdependent and interrelated. The Declaration stated that human rights and fundamental freedoms would have to be respected and promoted by all states irrespective 'of their political, economic, and cultural systems.[6]

It was during the French Revolution in1789 that natural rights were elevated to the status of legal rights with the formulation of the 'Declaration of the Rights of Man.' The Declaration defined the 'natural and imprescriptible rights of man' as liberty, property, security, and resistance to oppression. The American Bill of Rights in 1791 also incorporated natural rights. The above conception of natural rights was deployed in several political and social movements through the 19th century. [7]

For instance, the suffragette movement was premised on the natural equality between men and women. In 1919 the League of Nations came into existence aiming to 'promote international co-operation and to achieve international peace and security' by imposing obligations on Sates to avoid resort to war and adhere to an international rule of law[8]. Its failure in enforcing an international order was evident with the outbreak of the Second World War, resulting in its dissolution in 1946. The International Labour Organization [ILO] established in 1919 sought to promote social justice as a prerequisite for 'universal and lasting peace' and laid down basic, humane, and just conditions of work to be ensured by all Members to the ILO. In 1946, ILO became the first specialized agency of the United Nations. However, it was only in the aftermath of the gruesome Second World War that the need to acknowledge and safeguard human rights was articulated at the global level in the form of the Universal Declaration of Human Rights, 1948. Characteristics of human rights are:

[5] Hashimy, Magoge, and Mokarim, *supra* note 4.
[6] Hashimy, *supra* note 2.
[7] *Id*. at 12.
[8] Preamble to the Covenant of the League of Nations, available at http://flectcher.tufs.edu/multi/www/league-covenant.html.

Electronic copy available at: https://ssrn.com/abstract=4221073

i. Universal- the birth right of all human beings.
ii. Focus on the inherent dignity and equal worth of all human beings.
iii. Are equal, indivisible and interdependent.
iv. Cannot be waived or taken away
v. Impose obligations of action and omission, particularly on states and state actors.
vi. Have been internationally guaranteed
vii. Are legally protected
viii. Protect individuals & to some extent, group.

Classification of Human Rights; Karel Vasak, defined they are three generations of human rights: First-generation civil and political rights (These are "liberty-orientated" and include the rights to life, liberty, and security of the individual; freedom from torture and slavery; political participation; freedom of opinion, expression, thought, conscience and religion; freedom of association and assembly.) Second-generation economic, social, and cultural rights (These are "security-orientated" rights, for example, the rights to work; education; a reasonable standard of living; food; shelter and health care.)Third-generation solidarity rights (These include the rights to live in an environment that is clean and protected from destruction, and rights to cultural, political and economic development, rights to self-determination, etc.)

Human right is a birth right. Everyone is born with the human rights regardless of who he is, and to which community he belongs, and wears different culture. Everyone has a right to be protected by the State and the people. Human rights are inherent in, and integral to every human being, basic for human life and its development, and incorporated in the Constitutions of every State. In fact, the concept of human rights has gradually evolved over the past centuries. Human rights are generally defined as those rights which every human being is entitled to enjoy by virtue of being a member of the human species. These are minimal rights, which every individual must have against the arbitrary actions of the State or other public authorities by virtue of his being member of the human family. Because of their immense significance to human beings, human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

As per D.D. Basu[9], human right are those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of the human family,

[9] D.D.BASU, "HUMAN RIGHTS & CONSTITUTION LAW", LEXISNEXIS (Ed 24th 1994) 5.

Electronic copy available at: https://ssrn.com/abstract=4221073

irrespective of any other considerations.

A very comprehensive definition of human rights is to be found in the Protection of Human Rights Act, 1993 enacted by our Parliament. Under Section 2(1) (d), human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India. Krishna Iyer[10], a former outstanding judge of the Supreme Court of India, has defined human rights as under:

Human rights are writ on a large canvas, as large as the sky. The lawmakers, lawyers and particularly, the judges must make the printed text vibrant with human values, not be scared of the consequences on the status quo order.

1.1 U.N. AND HUMAN RIGHTS.

The Charter of the United Nations represents a significant advancement so far as faith in and respect for human rights is concerned. The provisions concerning human rights run throughout the U.N. Charter "like a golden thread". Much of the credit for this goes to the determined lobbying by non- governmental organisations at San Francisco Conference were in favour of the adoption of ever stronger provisions concerning human rights. The International Bill Rights has laid the foundation for formulation and adoption of human rights treaties and has incorporated concerns relating to equality, non-discrimination, education, health, social security, administration of justice, social development, and violence against women & the status of refugees & minorities.

1.2 UNIVERSALITY OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) emerged as a reaction to the atrocities and oppression caused by Second World War. Apart from detailing the rights and freedoms of individuals for first time, it was the first international acknowledgement of the 'inherent dignity and of the equal and inalienable rights of all members of human family as the foundation of freedom, justice and peace in the world'[11]. The UDHR emphasized that a 'common

[10] Justice V.R KRISHNA IYER, TAGORE LAW LECTURE, (2012) January.
[11] Preamble to the Universal Declaration of Human Rights, available at http://www.un.org/Overview/rights.html.

Electronic copy available at: https://ssrn.com/abstract=4221073

understanding of these rights and freedoms is of the greatest importance for the full realization' of the rights contained therein.

The UDHR was premised on the principle of universality and non- discrimination. It stated in Article 1: 'All human beings are born free and equal in dignity and rights.' The rights and freedoms contained in the Declaration were regarded as being available to all without 'distinctions of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As it was in the form of a declaration it was not binding on its signatories. However, upon its adoption, the Commission on Human Rights began to formulate a treaty that would be binding on states, so as to effectively realize the rights recognized by the UDHR.

In 1966, United Nations General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). These two covenants, the optional protocols, along with UDHR, formed the International Bill of Human Right.

1.3 UN HUMAN RIGHTS MECHANISMS & IMPLEMENTATION

A number of human rights have been set out in the treaties listed below. Human rights charter based and treaty- based mechanism monitor the implementation of these rights at an international level. Each of these mechanisms or bodies consist of a committee that monitors the implementation of human rights based on state reports, individual complaints, and inter-state complaints. Individuals or communities who are the victims of violations of human rights and/ or fundamental freedoms can appeal to these mechanisms and bodies for assistance.

A complaint that is investigated by a human rights body increases the profile of the human rights abuse, issues, and community within the international community & media. It may also attract significant support from other governments and inter- governmental organisations. This can be an effective means of putting pressure on a government to stop current or potential human rights abuse.

Treaty Based Organs;

Electronic copy available at: https://ssrn.com/abstract=4221073

1.4 ICCPR- PROVIDES FOR HUMAN RIGHTS COMMITTEE.[12]

ICESCR- provides for Committee on Economic, Social and Cultural Rights.[13]

ICERD- provides for Committee on the Elimination of Racial Discrimination.[14]

ICEDAW- provides for Committee on the Elimination of Discrimination against Women.[15]

CAT- provides for Committee against Torture.[16]

CRC- provides for Committee on the Rights of the child.[17]

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families- Committee on the Protection of the Rights of all migrant Workers and members of their families.[18]

1.5 UN HUMAN RIGHTS

The Charter of the United Nations represents a significant advancement so far as faith in and respect for human rights is concerned. The provisions concerning human rights run throughout the U.N. Charter "like a golden thread". Much of the credit for this goes to the determined lobbying by non- governmental organisations at San Francisco Conference were in favour of the adoption of ever stronger provisions concerning human rights. The International Bill Rights has laid the foundation for formulation and adoption of human rights treaties and has incorporated concerns relating to equality, non-discrimination, education, health, social security, administration of justice, social development, and violence against women & the status of refugees & minorities.

[12] International Human Rights: Monitoring State Obligations United Nations Human Rights Treaty Bodies Committees.
[13]Committee on Economic, Social and Cultural Rights, General Comment; The nature of States Parties obligations (fifth session, 1990).
[14] Committee on the Elimination of Racial Discrimination, General recommendation, Rights of Indigenous Peoples (fifty-first session, 1997)
[15] Committee on the Elimination of Discrimination against Women, available at http://www.womenslinkworldwide.org/co_int_cedaw.html.
[16] Art 11 of the Optional Protocol To CAT
[17] The United Nations Human Rights System, available at www.hrea.org/learn/guides/UN.html.
[18] Supra n 13.

Electronic copy available at: https://ssrn.com/abstract=4221073

1.6 UN MECHANISMS

Originally, the principal body responsible for human rights in the UN was the Commission on Human Rights. It carried out bulk of the standard- setting activity of the early years following the adoption by the UDHR. In the 1950s and early 1960s, the first human rights treaties adopted by the UN related to trafficking and prostitution, the political rights of women, the nationality of married women, and consent to marriage, minimum age for marriage, and registration of marriages. A major milestone was the adoption in 1966 of the two international covenants- International Covenant on Economic, Social and Cultural Rights (ICESCR) & the International Covenant on Civil and Political Rights (ICCPR) which together transformed the aspirational rights of the UDHR into binding treaty law. A second milestone was the systematic advancement of women's rights in the Declaration on the Elimination of All Forms of Discrimination against Women (CEDAW). In the 1970's & 1980's the UN adopted other core human rights treaties on racial discrimination, torture, children's rights, & in the 1990's and 2000's rights of migrant workers and persons with disabilities. For all their shortcomings, the expansion of the thirty articles of the UDHR into a considerable body of treaty law, with an impressive amount of interpretative work by nine treaty- monitoring bodies is an undeniable UN accomplishment.

1.7 FUNDAMENTAL FREEDOMS

Human rights include the right to life & liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education or collective rights, social security etc. human rights are very essential for the overall development of the human being not only at national but also at international level. But these human rights should not remain on paper. But they should be protected for the betterment of the society. In India, we have human rights in our Constitution. Therefore, it is our duty to see that human rights become meaningful to a large number of people in this country.

2.0 HISTORICAL BACKGROUND OF HUMAN RIGHTS

"Human rights" are rights inherent to all human beings, regardless of our nationality, residence, sex, sexual orientation and gender identity, national or ethnic origin, colour, religion, language

Electronic copy available at: https://ssrn.com/abstract=4221073

or any other status. We are all equally entitled to our human rights without discrimination[19]

This is the modern concept of our fundamental rights but it was not always this way. The belief that everyone, by virtue of her or his humanity, is entitled to certain human rights is fairly new and is something stemming from an evolution of the consideration of human dignity over the last centuries. Its roots lie in earlier tradition and documents of many cultures.

The origins of Human Rights are ideally pinpointed to the year 539 BC. When the troops of Cyrus the Great conquered Babylon. Cyrus freed the slaves, declared that all people had the right to choose their own religion, and established racial equality. These and other principles were recorded on a baked-clay cylinder known as the Cyrus Cylinder, whose provisions served as inspiration for the first four Articles of the Universal Declaration of Human Rights.

Another cornerstone in Human Rights History is represented by the promulgation of the Magna Charta in 1215 which introduced a raw concept of "Rule of Law" and the basic idea of defined rights and liberties to all persons, which offers protection from arbitrary prosecution and incarceration. Before the Magna Charta, the rule of law, now considered as a key principle for good governance in any modern democratic society, was perceived as a divine justice, solely distributed by the monarch or the king or, in this case, King John of England.

Petition of Right (1628)

The Petition of Right, initiated by Sir Edward Coke, was based upon earlier statutes and charters and asserted four principles: (1) No taxes may be levied without consent of Parliament, (2) No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus), (3) No soldiers may be quartered upon the citizenry, and (4) Martial law may not be used in time of peace.

The Bill of Rights 1791 is the first 10 Amendments to the Constitution. It spells out Americans' rights in relation to their government. It guarantees civil rights and liberties to the individual—like freedom of speech, press, and religion.

- The First Amendment provides several rights protections: to express ideas through speech and the press, to assemble or gather with a group to protest or for other reasons,

[19] By S.K. BHOSLE. "CONCEPTS OF HUMAN RIGHTS, ORIGIN & EVALUATION OF THE CONCEPT". [ed. 6th 2015] 67. http://dspace.vpmthane.org.

Electronic copy available at: https://ssrn.com/abstract=4221073

and to ask the government to fix problems. It also protects the right to religious beliefs and practices. It prevents the government from creating or favoring a religion.

- The Second Amendment protects the right to keep and bear arms.
- The Third Amendment prevents government from forcing homeowners to allow soldiers to use their homes. Before the Revolutionary War, laws gave British soldiers the right to take over private homes.
- The Fourth Amendment bars the government from unreasonable search and seizure of an individual or their private property.
- The Fifth Amendment provides several protections for people accused of crimes. It states that serious criminal charges must be started by a grand jury. A person cannot be tried twice for the same offense (double jeopardy) or have property taken away without just compensation. People have the right against self-incrimination and cannot be imprisoned without due process of law (fair procedures and trials.)
- The Sixth Amendment provides additional protections to people accused of crimes, such as the right to a speedy and public trial, trial by an impartial jury in criminal cases, and to be informed of criminal charges. Witnesses must face the accused, and the accused is allowed his or her own witnesses and to be represented by a lawyer.
- The Seventh Amendment extends the right to a jury trial in Federal civil cases.
- The Eighth Amendment bars excessive bail and fines and cruel and unusual punishment.
- The Ninth Amendment states that listing specific rights in the Constitution does not mean that people do not have other rights that have not been spelled out.
- The Tenth Amendment says that the Federal Government only has those powers delegated in the Constitution. If it isn't listed, it belongs to the states or to the people.

An evolution of the concepts expressed by the Magna Carta is represented by the English Bill of Rights. It was an act signed into law in 1689 by William III and Mary II, who became co-rulers in England after the overthrow of King James II. The bill outlined specific constitutional and civil rights and ultimately gave Parliament power over the monarchy. Many experts regard the English Bill of Rights as the primary law that set the stage for a constitutional monarchy in England. It's also credited as being an inspiration for the U.S. Bill of Rights (1791).

The Declaration of the Rights of Man and of the Citizen, adopted in 1789, by France's National Assembly, represents one of the basic charters of human liberties, containing the principles that

Electronic copy available at: https://ssrn.com/abstract=4221073

inspired the French Revolution.

The basic value introduced by the Declaration was that all "men are born and remain free and equal in rights", which were specified as the rights of liberty, private property, the inviolability of the person, and resistance to oppression. All citizens were equal before the law and were to have the right to participate in legislation directly or indirectly; no one was to be arrested without a judicial order. Freedom of religion and freedom of speech were safeguarded within the bounds of public "order" and "law". Private property was given the status of an inviolable right, which could be taken by the state only if an indemnity were given and offices and positions were opened to all citizens. The time for a revolution and a deep progress in the protection and promotion of human dignity was ripe.

Eventually, it took the catalyst of World War II to propel human rights onto the global stage and into the global conscience. The unprecedented cruelties perpetrated during the conflict and outside it such as the extermination by Nazi Germany of over six million Jews, Sinti and Romani (gypsies), homosexuals, and persons with disabilities horrified the world. The idea of human rights thus emerged even stronger than ever after World War II. The Trials held in Nuremberg and Tokyo after World War II, introduced the rather new concepts of "crimes against peace," and "crimes against humanity."

Governments then committed themselves to establishing the United Nations, with the primary goal of bolstering international peace and preventing conflict. People wanted to ensure that never again would anyone be unjustly denied life, freedom, food, shelter, and nationality.

It was the 1945 and the fifty founding members of the United Nations stated, in the preamble of the UN Charter, that they were determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained in order to promote social progress and better standards of life in larger freedom[20].In the first article of the same Charter, Member states pledged "to achieve

[20] SAMUEL MOYENL, 'THE GLOBALIZATION OF HUMAN RIGHTS HISTORY', GLOBAL ORIENTAL PUBLICATIONS, [ed.20th 2007] 34-56.

Electronic copy available at: https://ssrn.com/abstract=4221073

international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

2.1 THE ORIGIN AND EVOLUTION OF THE CONCEPT OF HUMAN RIGHTS:

The problem of human rights is intrinsically bound up with the relations existing between man and his social environment, more specifically with the relationship between man and all the institutions, on which his social existence depends. The legal concept of human rights is the product of a specified period of history. In Europe, the concept mainly emerged under the umbrella of the philosophical, political and legal values, which gained ground from the Renaissance onwards. The emergence of these values and their development are themselves inseparable from a long historical process of economic, social, political and cultural transformation.

Rights may be seen as emanating from various sources, whether religion or the nature of man or the nature of society. The Natural Law view, as expressed in the traditional formulations of that approach or by virtue of the natural rights movement, is that certain rights exist as a result of a higher law than positive or man- made law. Such a higher law constitutes a universal and absolute set of principles governing all human rights in time & space. The natural rights approach of the 17th century associated primarily with John Locke, founded the existence of such inalienable rights as the right to life, liberty & property upon a social contract marking the end of difficulty conditions of the state of nature. Human dignity is seen as the key concept in relation to these values and to the ultimate goal of a world community in which a democratic distribution of values is sought.

To examine the main foundation of international recognition and protection of human rights, it is essential to enquire into the relationship between the conceptions of law of nature and the natural rights of men on the one hand and the effective acknowledgement of these rights by international law on the other hand. In fact, the concept of human rights has been evolved from the concept of natural rights, which in turn were derived from natural law. There had long been' a tendency to set up natural law as a body of principles superior to positive law.

3.0 NATURAL LAW

Electronic copy available at: https://ssrn.com/abstract=4221073

In modem terms, 'the human right' as per political and international vocabulary is a product of the theory of natural rights. Human rights are nothing but natural rights in a modem rhetorical garb. Natural law is known as 'Higher Law' or the 'Law of Nature' is the oldest as well as most modem, as it has been continually dominating the entire basis of politics, law, religion and social philosophy. Natural law has always been regarded as a frame of reference to adjudge the validity of existing state of affairs whether for maintaining status-quo or for bringing about a radical change. Natural law in common sense means the law that is largely unwritten or the nature of man or reason or denied from God etc.,. Natural law is analogous to bandstand with which, a number of high ideals are mixed up. These are labelled as morality, justice, ethics, right reason, good conduct, quality, liberty, freedom, social justice, democracy etc.[21]

It would, therefore, be logical to start with the concept of natural rights, which eventually led to the formulation of 'human rights'. Ever since the beginning of civilized life in a political society, the shortcomings and tyranny of the powers that have led men, to the quest of a superior order. While beyond the material world, it led to Spiritualism and Divine Law, within the social order dissatisfaction with laws, ordained by tyranny or even benevolent despots generated an appeal to a natural law, which was to be an embodiment of reason, justice, immutability and universality which were lacking in man-made laws. Western Scholars date the genesis of this ideal of natural law to Sophocles, more than 400 years before Christ.

3.1 NATURAL LAW TO NATURAL RIGHTS:

The Natural law of the classical modem era was in essence different in form and spirit from that of medieval age, which was dominated by Church, Priests and Holy Christian Saints. After Renaissance and Reformation in the 14th and 15th centuries, natural law ceased to be associated with Church and Divine God. Natural law of the modem classical period was marked by its two distinctive characteristics. First, it was more secularized, political and non- religious in form and content. The new natural law philosophy moved away from its theological origin and founded it once again on human reason exclusively. Second, the medieval thinkers had made individual as merely an object having merely duties and obligations towards Pope and the Emperor, i.e. the feudal lords. The emerging natural law in the classical era become a theory

[21] V.D MAHAJAN'S "JURISPRUDENCE & LEGAL THEORY", EASTERN BOOK COMPANY, LUKNOW. [Ed. 5th at 23-52].

Electronic copy available at: https://ssrn.com/abstract=4221073

of natural rights of man and States, which dominated the British, the French and the American Revolution in the 17th and 18th centuries.

Natural law theory led to natural rights theory. This theory most closely associated with modem human rights. The chief exponent of this theory was John Locke, who developed his philosophy within the framework of 17century humanism and political activity. Locke imagined the existence of human beings in a state of nature. In that State, men and women were in a state of freedom, able to determine their actions and also in a state of equality in the sense that, no one was subjected to the will or authority of another. To end certain hazards and inconvenience of the state of nature, men and women entered into a contract, by which they mutually agreed to form a community and set up a body politic. However, in setting up of that political authority, they retained the natural rights of life, liberty and property, which were their own.[22]

In England, the natural law is superior to man-made law, was argued by Blackstone in the 17th century. Once the concept of a higher law binding on human authorities was evolved, it came to be asserted that, there were certain rights anterior to society, which too were superior to rights created by the human authorities, and was supposed to have existed even before the birth of political society. These rights could not, therefore, be violated by the State. The deficiencies of this doctrine of natural rights from the legal stand point, however, were that, it was a mere ideology, and there was no agreed catalogue of such rights and no machinery for their enforcement, until they were codified into National Constitutions, as a judicially enforceable Bill of Rights. Government was obliged to protect the natural rights of its Subjects and if Government neglected this obligation, it would forfeit its validity and office. Locke's idea of limited Government and natural rights became part of the English Bill of Rights, 1689, the French Declaration of the Rights of Man, 1789 and the U.S. Bill of Rights, 1791.

The Bill of Rights evolved in the internal struggle within the English soil gave birth to the idea of Parliamentary Democracy that cried a halt to the arbitrary power and unbridled authority of King of England. The American Declaration, 1776 and the French Revolution 1737-1793 helped in the evolution of a springboard of international opinion for supremacy of natural and imprescriptible rights of man. The French Declaration gave birth to new ideas in expression

[22] HEN KIN, "RIGHTS: AMERICAN & HUMAN", 99. Colum.L.Rev.405 (1979).

Electronic copy available at: https://ssrn.com/abstract=4221073

like 'equality before law', 'freedom of opinion', 'freedom of religion', 'freedom from arrest except in conformity with law', and a host of other concepts.

After about 600 years of the 'Magna Carta', Abraham Lincoln, formally abolished slavery and granted freedom from bondage to the wretched slaves. It was a mighty and triumphant leap forward of human rights. The term 'human rights' was introduced in the United States Declaration of Independence in 1776 and the U.S. Constitution embodied a Bill of Rights. The French Revolution gave birth to the Declaration of Rights of Man and Citizen in 1789. Thus, natural rights theory makes an important contribution of human rights. It affords an appeal from the realties of naked power to a higher authority, which is asserted for the protection of human rights. It identifies with human freedom and equality from which other human rights easily flow and it provides properties of dependability, security, and support for a human rights system both domestically and internationally. It is to be noted that the principal problem with natural law is that the rights considered to be natural differ from theorist to theorist, depending upon their conceptions of nature. Another critical problem facing natural rights doctrine, now, is to determine the norms that are to be considered as part of law of nature and therefore inalienable. Because of this and other difficulties, natural rights theory became unpopular with the legal scholars and philosophers. However, in revised form, natural rights philosophy had a renaissance in the aftermath of Second World War.[23]

Grotius, the father of modem International law, saw the law of nations as embodying both laws which had as their source in the will of man (as distinguished from the immutable principles) and laws derived from the principles of the law of nature. This theory, of course, has immense importance for the status and legitimacy of human rights as part of a system of International law.[24]

3.2 GLOBAL SCENARIO OF HUMAN RIGHTS:

A right, as we understand today, is the product of a given social order. The idea of the inalienable rights of human beings is much older and, has found expression in the writings of poets, philosophers and politicians in antiquity and in the middle ages. Throughout the centuries, there has been a close connection and interdependence between the idea of 'natural

[23] H.L.A.HART, "UTILITARIANISM & NATURAL RIGHTS" TUL.L.REV PUBLISHERS (Ed.53th 1979).
[24] Dinah Shlton, Prof. of Law: "*An Introduction to the* History *of International Human Rights Law*", Strasbourg, France, July 2003.

Electronic copy available at: https://ssrn.com/abstract=4221073

law' and the idea of 'natural rights of man'. The idea of the natural rights of man has been reflected in the works of the Stoics, both Greeks and Romans, and in the teaching of early Christian Priests such as Thomas Aquinas, and those of medieval English scholars of law.

Human rights have made their appearance in positive law at a later date in the history of civilization. The ancient systems of law did not know human rights as we conceive them now. The western world made some progress under the Canons of the Roman Church. The revival and reception of Roman law is hardly contributed to the cause of the fundamental rights of man. Under the onslaught of the Common Law, the King's prerogative gradually yielded to the demands of English people for the recognition of certain rights which received a sound legal basis at the end of the 17th century.

According to Thomas Aquinas[25], Law is 'nothing else than an ordinance of reason for common good, made by him who has the care of the community, and promulgated.' Man can control his own destiny to a large extent but he is subject to certain basic impulses which are the impulse towards self- preservation, the impulse to improve and take such decisions.

The ideology of natural law is classically presented as early as 1689 by John Locke in his essay on 'Civil Government'. He envisaged the concept of an original state of nature, where no national community or State power had been organized and where, all people have the same rights and obligations in common. Locke views this state of nature, as providing everyone an entitlement of defending his right to life, freedom and property. Although Edmend Burke and Jeremy Bentham opposed the theory of eternal or natural law, still this concept made great contribution to the concept of human rights.

The idea of natural law as a universal moral law which transcends the law of States is one by which European thinking about politics has been permeated for more than two thousand years. And although, it went out of fashion again in the 19th century, it has come into favour again since the Second World War.

4.0 SOCIAL CONTRACT THEORY

4.1 THOMAS HOBBES:

[25] Ibid 18.

Electronic copy available at: https://ssrn.com/abstract=4221073

The first and most important law of nature commands that each man be willing to pursue peace when others are willing to do the same, all the while retaining the right to continue to pursue war when others do not pursue peace. Being reasonable, and recognizing the rationality of this basic precept of reason, men can be expected to construct a Social Contract that will afford them a life other than that available to them in the State of Nature. This contract is constituted by two distinguishable contracts. First, they must agree to establish society by collectively and reciprocally renouncing the rights they had against one another in the State of Nature. Second, they must imbue some one person or assembly of persons with the authority and power to enforce the initial contract. According to this argument, morality, politics, society, and everything that comes along with it, all of which Hobbes calls 'commodious living' are purely conventional. Prior to the establishment of the basic social contract, according to which men agree to live together and the contract to embody a Sovereign with absolute authority, nothing is immoral or unjust – anything goes. After these contracts are established, however, then society becomes possible, and people can be expected to keep their promises, cooperate with one another, and so on. The Social Contract is the most fundamental source of all that is good and that which we depend upon to live well.

4.2 JOHN LOCKE:

According to Locke, the State of Nature, the natural condition of mankind, is a state of perfect and complete liberty to conduct one's life as one best sees fit, free from the interference of others. This does not mean, however, that it is a state of license: one is not free to do anything at all one pleases, or even anything that one judges to be in one's interest. The State of Nature, although a state wherein there is no civil authority or government to punish people for transgressions against laws, is not a state without morality. The State of Nature is pre-political, but it is not pre-moral. Persons are assumed to be equal to one another in such a state, and therefore equally capable of discovering and being bound by the Law of Nature. The Law of Nature, which is on Locke's view the basis of all morality, and given to us by God, commands that we not harm others with regards to their "life, health, liberty, or possessions"

4.3 ROUSSEAU:

The most basic covenant, the social pact, is the agreement to come together and form a people, a collectively, which by definition is more than and different from a mere aggregation of individual interests and wills. This act, where individual persons become a people is "the real

Electronic copy available at: https://ssrn.com/abstract=4221073

foundation of society". Through the collective renunciation of the individual rights and freedom that one has in the State of Nature, and the transfer of these rights to the collective body, a new 'person', as it were, is formed. The sovereign is thus formed when free and equal persons come together and agree to create themselves anew as a single body, directed to the good of all considered together. So, just as individual wills are directed towards individual interests, the general will, once formed, is directed towards the common good, understood and agreed to collectively. Included in this version of the social contract is the idea of reciprocated duties: the sovereign is committed to the good of the individuals who constitute it, and each individual is likewise committed to the good of the whole. Given this, individuals cannot be given liberty to decide whether it is in their own interests to full fill their duties to the Sovereign, while at the same time being allowed to reap the benefits of citizenship. They must be made to conform themselves to the general will, they must be "forced to be free"

4.4 THE ENGLISH EXPERIENCE:

Historians, however, credit the origin of the concept of 'human right' to Magna Charta in 1215 A.D[26]. While Magna Charta is often erroneously seen as the origin of the liberties of English Citizens, it was not until the Bill of Rights, 1689 that rules directed towards the protection of individual rights or liberties emerged. But, even this development must be seen in context, the Bill of Rights, which is described in its long title as 'An Act Declaring the Rights and Liberties of the Subject and Setting the Succession of the Crown', was the out-come of the 17th century struggle of Parliament against the arbitrary rule of the Stuart monarchs.

In Marxist analysis, the Glorious Revolution of 1688 and Bill of Rights, which institutionalized it, was a bourgeois revolution: it simply confirmed the ascendancy of the gentry and merchant class over the monarchy. For the most part, the Bill represented a Constitutional settlement, which protected the sectional interest of one group. While, the historians saw the Bill as the triumph of liberty over despotism and the protection of Englishman from absolute and arbitrary Government.

[26] Its famous clause 39, stating that "No freedom shall be taken or imprisoned or dispossessed or outlawed or banished or in any way destroyed, nor will we go upon him, nor send upon him, except by the lawful judgment of his peers or by the law of the land" has been termed as a symbol of individual liberty for centuries to come. English King John at Runnymede- accepted to grant certain rights to a particular section of his people.

Electronic copy available at: https://ssrn.com/abstract=4221073

There is merit in both these views, for the Bill of Rights not only secured the interests of the bourgeoisie, but it also dealt with certain matters. Having the characteristics of 'human rights', although they were not refused on to as such at the time.

4.5 THE AMERICAN EXPERIENCE:

The American Independence Movement of 1776 and the French Revolution of 1789 were inspired by the ideal of natural rights and both movements were sought to challenge governments that curtailed the natural rights of people.[27] The Preamble to the American Declaration of Independence, 1776 reads:

'We hold these truths to be self-evident, that all men are created, that they are endowed by their creator with certain rights, that among these are Life, Liberty and the Pursuit of Happiness, that to secure these rights, Governments are instituted among men, during their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it. While, the high sounding ideals of the protection of life, liberty and the pursuit of happiness were sufficient for a declaration of independence, they were clearly inadequate as a catalogue of individual rights, which the State was obliged to protect'.

The Virginia Declaration of Rights 1776, which was drafted by George Mason, included specific liberties that were to be protected from State interference. These included freedom of the press, the free exercise of religion and the obligation that 'no person should be deprived of their liberty except by the law of the land of the judgment of their Peers'. The United States Constitution, influenced by Mason's Virginia Declaration included the protection of these minimum rights. The United States adopted a Bill of Rights containing a list of guaranteed individual rights. This was affected by a number of amendments to the Constitution. Among the more well-known amendments are:
First Amendment, which protects freedom of religion, freedom of expression, freedom of Press. **Fourth** Amendment, which protects individuals against unreasonable search and seizures. **Fifth** Amendment establishing the rule against self-incrimination and the right to due

[27] A Short History of the Human Rights Movement Early Political, Religious, and Philosophical Sources, Human Rights web, available at http://www.hrweb.org/history.html.

Electronic copy available at: https://ssrn.com/abstract=4221073

process of law. Subsequent amendments to the Constitution have extended the Bill of Rights, but no rights have ever been removed or abridged by congress.

4.6 FRENCH REVOLUTION:

Although the French Revolution and the American Struggle for Independence had many common features, they differed in one crucial aspect. Whereas, the rebellious colonies had simply sought to establish themselves as an independent sovereign nation, the French revolutionaries were concerned with the demolition of an old absolutist system of government and the establishment of a new democratic order. The central proposition of this concept was, therefore, to be by the people of a nation lay with its people. Government was therefore to be, by the people, for the people, and any government which was not responsible for its citizen's demands could be changed by expression of the popular will.

The Declaration of the Rights of Man and the Citizen, 1789[28] made it perfectly apparent that the Government is a necessary evil and that as little of it as possible is desirable. According to the Declaration, true happiness is to be found in individual liberty, which is the product of the 'natural, unalienable and sacred rights of man'. Thus, while the Declaration states that certain individual rights are protected i.e. the right to due process, the presumption of innocence, the freedom to hold opinions and religious beliefs and the freedom to communicate ideas and opinions, it prefaces these with a clear libertarian philosophy.

Article 2 of the Declaration provides that 'the aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are Liberty, Property, Safety and Resistance to Oppression.
Article 4 of the said Declaration provides that 'liberty consists in being able to do anything that does not harm others: thus the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law.[29]

[28] Art 1 of the French Declaration of the Rights of Man and of the Citizen stated that "Men are born and remain free and equal in rights; social distinctions can be based only upon public utility.
[29] The Declaration of the Rights of Man and the Citizen, 1789, at K.C JOSHI "INTERNATIONAL LAW & HUMAN RIGHTS", EBC PUBLICATIONS DELHI. [4th ed. 431].

Electronic copy available at: https://ssrn.com/abstract=4221073

5.0 INTERNATIONAL HUMAN RIGHTS LAWS

5.1 INTRODUCTION

The view adopted by the western world with regard to international human rights law in general terms has tended to emphasise the basic civil and political rights of individuals that is to say those rights that take the form of claims limiting the power of government over the governed. Such rights would include due process, freedom of expression, assembly and religion, &political participation in the process of government. The consent of the governed is seen as crucial in this process.[30]

The approach of the Soviet Union was to note the importance of basic rights and freedoms for international peace and security, but to emphasise the role of the state. Tunkin[31] wrote that the content of the principle of respect for human rights in international law may be expressed in three propositions:

1. All states have duty to respect the fundamental rights and freedoms of all persons within their territories.
2. States have a duty not to permit discrimination by reason of sex, race, religion or language and
3. States have a duty to promote universal respect for human rights and to co-operate with each other achieve this objective.

When the Universal Declaration of Human Rights (UDHR) was adopted in 1948, the world was a very different place. Years of war had left the better part of two continents in disarray. A geopolitical reordering saw an Iron Curtain fall across a continent and a Cold War rise across the globe. And the world was waking up to the unconscionable horrors of the Holocaust. From the ruins of the Second World War came a call to enshrine fundamental human rights.

[30] E.g. R.HAUSER,"A FIRST WORLD VIEW", IN HUMAN RIGHTS & AMERICAN FOREIGN POLICY , EDS. D.P KOMMERS & G. LOESHER, NOTRE DAME,[1979 P.85.]

[31] G.TUNKIN, THEORY OF INTERNATIOANAL LAW, LONDON, [1974, P.81]. ; SEE ALSO K.TEDIN 'THE DEVELOPMENT OF THE SOVIET ATTITUDE TOWARDS IMPLEMENTING HUMAN RIGHTS UNDER THE UN CHARTER',5 HRJ, 1972, P.399;.
R. N DEAN, BEYOND HELSINKI: "THE SOVIET VIEW OF HUMAN RIGHTS IN INTERNATIONAL LAW ", [21 VA. JIL,1980, P.55.]

Electronic copy available at: https://ssrn.com/abstract=4221073

Facilitating this moment of global introspection was a Philosophers' Committee under the direction of the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Committee enlisted leading thinkers – from Mahatma Gandhi to Aldous Huxley – to contribute their insights about a proposed Universal Declaration of Human Rights. The work of the Philosophers' Committee was then passed to the UN Human Rights Commission, chaired by Eleanor Roosevelt, a tireless fighter whose supreme and lasting achievement was shaping a human rights consensus among the then 58 UN Member States.

The framers of the Declaration envisaged three parts to the post-war human rights enterprise: a set of general principles, the codification of those principles into law, and a practical means of implementation. Because of the divisions and hostilities of the Cold War, countries could neither agree on the basis of human rights, nor on how specific rights should be upheld. So it was that Eleanor Roosevelt could only complete the first task. But owing in large part to her vision and leadership, the nations of the world did issue a historic declaration of human rights – a pantheon that for the first time encompassed civil, political, social, and economic rights. It is a Universal Declaration that has withstood the test of time. As the Declaration's seventieth anniversary nears, we are reminded that its age has hastened an evolution, bequeathing to us something both inspirational and demanding. Today, the UDHR provides a "common conscience" for humanity. It is a beacon of hope. It is also a call for action, setting a high standard by which we judge the width of our generosity, the depth of our compassion, and the breadth of our humanity. It sends forth a message that injustice anywhere is a threat to justice everywhere, and that no evil can last forever.

And everywhere we look we are reminded that the Declaration has stirred civil rights movements and hastened the march of progress. The words of protestors speaking out against colonialism and apartheid have been laced with the spirit, and at times the letter, of the Declaration. Those seeking to discriminate on the basis of ethnicity, religion, gender, and sexual orientation have confronted a wall – and a tall one at that – in the Declaration.[32]

[32] THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN THE 21st CENTURY, A Living Document in Changing World, A Report by the Global Citizenship Commission , Chaired by Gordon Brown.

Electronic copy available at: https://ssrn.com/abstract=4221073

5.2 CIVIL AND POLITICAL RIGHTS:

Article 29(2) of the UDHR sets out the circumstances in which limitations on individual rights are permissible. The Declaration as a whole should be read as the assertion of a strong presumption in favour of human rights and Article 29(2) should be read as placing the burden of proof on anyone who seeks to limit them. Unlike the UDHR, the International Covenant on Civil and Political Rights (ICCPR) makes separate and extensive provision for the derogation of rights in national and/or international emergencies. However, the increasing reliance in the modern world on long-term, continuous states of emergency as justifications for human rights derogations is not dealt with adequately by the ICCPR's formulations, as they envisage relatively short-term, clearly demarcated emergencies. The international community should develop standards governing long-term derogations of human rights in national or international emergencies, to ensure that this process is not abused.

In recent years, there have been military interventions that contravene the UN Charter's prohibition on the use of force. And states have responded to the rise and persistence of international terrorism by employing tactics of surveillance, detention of suspects, and targeted killing. The Commission emphasizes that each of these developments raises human rights issues, and calls on the international community to develop standards governing the use of force and the response to international terrorism that are derived from current conceptions and enduring foundations of human rights. Lastly, it is critical to take a comprehensive approach to terrorism that encompasses not only essential security-based counter-terrorism measures, but also systematic preventative measures that address the root causes of violent extremism. These include lack of socioeconomic opportunities; marginalization and discrimination; poor governance; violations of human rights and the rule of law; prolonged and unresolved conflicts; and radicalization in prisons.

5.3 SOCIAL AND ECONOMIC RIGHTS:

Social and economic rights are vital. They reflect genuine human needs that every state has an obligation to attend to, within existing resources, in the interest of all those committed to their care. We think it is fitting and valuable that the UDHR enshrined social and economic rights in the same document as civil and political rights, and thus to perceive human rights as a whole in the context of a single declaration. The social and economic provisions of the UDHR should be interpreted to mean that everyone is entitled to certain minimum standards of health,

Electronic copy available at: https://ssrn.com/abstract=4221073

education, and social security. The concept of dignity – while abstract – provides a yardstick against which to set minimum measures. The extent of available resources in each society is one determinative factor, though the UDHR also imposes constraints on the allocation of such resources as there are.

States have front-line responsibility for the social and economic well-being of their citizens. Fair economic growth has a critical role to play in this, and the Commission believes it is crucial to see a stronger connection between economic policy and the instruments of human rights. It is evident, however, that the challenges faced by many states cannot be resolved entirely by actions in those states alone. There is an overwhelming moral case for interpreting the social and economic rights provisions of the Declaration as placing obligations on the international community to alleviate world poverty. International aid and transfers, aimed at strengthening the capacity of recipient states to secure the social and economic rights of their citizens, thus have an indispensable role to play. It is sometimes said that, although the rights in the Declaration are presented as an interconnected body of principles, complementary and mutually supportive, there are in fact serious conflicts among them. It is sometimes argued, for example, that the rights to freedom of speech or assembly may conflict with the right of people not to live in poverty, that the only way to lift large numbers of people out of poverty may involve authoritarian rule. In certain very specific real world settings, our ability to fully implement one right may conflict with our ability to fully implement another, at least temporarily. However, any such claim would be very hard to establish and must always be subjected to the most rigorous scrutiny. Furthermore, it is always a serious question whether any particular proposed trade-off is morally justifiable.

5.4 RESPONSIBILITY FOR HUMAN RIGHTS:

The UDHR does not specify who carries the responsibilities corresponding to the rights it enumerates. Yet the role of states remains essential. Given the realities of our world – this was even more the case in 1948 – states must be regarded as the main guarantors of the rights of their own citizens. The laws and national constitutions of states, in most instances, will be the first recourse to address any violations of human rights, and should be regarded as the ordinary mode of implementation. In a globalized world, it is also the duty of each state to concern itself

Electronic copy available at: https://ssrn.com/abstract=4221073

to a certain extent with the human rights of persons outside its borders.[33]

While states have the primary responsibility for ensuring the human rights of their citizens, there are numerous examples of situations where governments no longer control substantial tracts of territory, no longer control the military or have a monopoly on force, lack legitimacy, and are unable or unwilling to provide public services. In these situations, who is responsible for the human rights of the population? This issue needs to be urgently addressed by the international community. The fact that one entity – like a state – has responsibility for a given right is quite compatible with other entities also having their own obligations. Rights generate waves of responsibility, and those responsibilities may fall on an array of duty-bearers. Though national state responsibility is primary, sub-national governments, international institutions, corporations, and private persons each and all have a common duty to ensure recognition of human rights and accept responsibility to secure them. Rights-bearers themselves also have responsibilities with respect to their own rights and responsibilities as rights-bearers to the rights system as a whole and to society generally.

It would be a mistake to develop a rigid or closed model of responsibility for rights, or to conclude that rights are of no value until responsibilities are actually specified. The advantage of specifying rights first is that this provides a basis for thinking about the duties of the state and other entities. [34]

5.5 IMPLEMENTATIONS OF HUMAN RIGHTS: STATE OF PLAY ON REPRESENTATIVE RIGHTS.

In our examination of the implementation of select rights in the Declaration – the anti-slavery provision; the anti-torture provision; the free expression provision and the free association provision; and the education provision – a number of themes emerged. First, the UDHR represents the founding document in a process of progressive elaboration of human rights. Second, historic progress has been made in the promotion and protection of rights since 1948, including the development of a body of human rights law and implementation mechanisms that simply could not have been envisioned in the 1920s and 1930s. Third, despite the gains, we must recognize and respond to the reality that human rights continue to be violated on an

[33] Ibid 29.
[34] The Commission has judged that it is both sensible and essential to retain an open and developing sense of where responsibilities lie, since the environment in which rights have to be satisfied is constantly changing.

Electronic copy available at: https://ssrn.com/abstract=4221073

alarming scale across the globe. Fourth, the fullness of human rights will only be achieved through multiple overlapping and coordinated mechanisms – that operate at both the international and national levels, and which engage both governmental and non-governmental institutions.

5.6 LEGAL STATUS:

The UDHR was originally formulated as "soft law;" it was aspirational, not legally binding. Since its adoption, however, the UDHR has been complemented by the two covenants that are legally binding on the nations that have signed and ratified them: the International Covenant on Civil and Political Rights, which came into force in 1976 and has been ratified by 168 nations; and the International Covenant on Economic, Social and Cultural Rights, which also came into force in 1976 and has been ratified by 164 nations. Further, many provisions of the UDHR are also now part of customary international law. There are additional conventions on particular human rights concerns, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). International Bill of Human Rights, directly or indirectly adopting ideas and formulations from these international instruments. In this way the UDHR provides a template for national law-making, and forges a continuum between the international protection of human rights and their protection under public law in particular countries.

In reality, most of the legal work to secure human rights and vindicate them in the face of violations is conducted under the auspices of national and regional law and practice. This will continue to be the ordinary mode of implementation in the twenty-first century, and one of the roles of international declarations like the UDHR and the Covenants should be to serve as a model for structuring local constitutional and legislative arrangements.

5.7 BRIEF HISTORY OF THE COVENANTS:

The UN Declaration of 1 January 1942 made by the allied powers of the World War II made the issues of human rights as an end of the war. The charter of the UN, 1945 begins with a recitation of human rights and assigns a comprehensive role to the General Assembly and the

Electronic copy available at: https://ssrn.com/abstract=4221073

Economic and Social Council (ECOSOC) for the promotion of human rights. It was decided during the drafting of the Charter that there should be a Bill of Rights of nations and of individuals. In the first session of the General Assembly, Cuba had presented a draft on "The Declaration of Fundamental Human Rights and Freedoms". The first task given by the General Assembly to the ECOSOC was to prepare an International Bill of Rights. But there was a division of opinion between those who wanted the Bill of Rights as a "Declaration" and those who preferred a "convention" or "covenant".

A compromise was ultimately reached under which the Bill of Rights was to have two parts: one, a declaration of certain international standards of human rights having moral force for persuading States to accept them voluntarily; and the other; set of rights and freedoms as part of International agreement or a treaty making them binding on States.[35]

After the adoption of the UDHR in 1948, the Commission on Human Rights initiated the drafting of the convention having binding legal obligation. During this period, many independent States joined the U.N their perception of human rights was different from the European States. These newly emancipated States had common experience of the colonialism and exploitation at the hands of the European powers. They felt that economic, social & cultural rights were more important than the civil and political rights and the former could ensure larger freedoms. The implementation of the economic, social, & cultural rights also required a different monitoring mechanism, this prompted the General Assembly and the ECOSOC to have two Conventions instead of one.

After 15 long years of negotiations, the General Assembly adopted two covenants on human rights on 16 December 1966. After the requisite number of ratifications by the States parties, these covenants came into force in 1976[36]. The Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political rights & optional Protocol to the Covenant on Civil and Political Rights were adopted by General Assembly together.[37]

[35] LOUIS B. SOHN, HORIZONS OF FREEDOM (1968) 1: V.S MANI, "HUMAN RIGHTS & THE UNITED NATIONS" (1998) 40 JILI 38.

[36] The Covenant on Economic, Social and Cultural Rights came into force on 3-1-1976 and the Covenant on Civil and Political Rights became operative on 23-3-1976.

[37] 1496th plenary meeting 16-12-1996. See, BROWNILE, BASIC DOCUMENTS IN INTERNATIONAL LAW, (2000) 196-97.

Electronic copy available at: https://ssrn.com/abstract=4221073

India declared internal Emergency on 25 June 1975 which lasted up to 19 March 1977. During this period, draconian legislations were made and the Constitution was amended. The citizens were denied their fundamental rights and the otherwise strong and active judiciary also failed in protecting the citizen's right to life and liberty.[38] Thus, the guaranteed rights [Art. 32(2) of the Indian Constitution] were denied to the citizens. This scenario of internal Emergency in 1975 led a distinguished author to declare that "no amount of constitutional entrenchment will provide an irremovable barrier against the determined onslaught of the adversaries of freedom, armed with sufficient force to overcome all resistance".[39]After the defeat of the party in power in 1977 general elections, the Govt. of India acceded to these covenants under public pressure and ratified these covenants in 1979.

5.8 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This covenant of a preamble and 53 articles divided into six parts; optional Protocol with 14 articles adopted with the covenant in 1996 and second protocol with 11 articles adopted in 1989. The covenant makes a distinction between civil and political rights. The civil rights cannot be denied, while the State, in the given situations such as public emergency when the life of the nation is threatened, may derogate from the obligations of the covenant. But, civil rights, for e.g. right to life, right against torture, right against slavery and servitude, right against imprisonment in contractual obligations, right against ex post facto penal laws, right to recognition before law and right to the freedom of thought, conscience and religion, cannot be taken away in any situation.

This covenant also provides for the right of self-determination; right to life prohibition against torture and cruel, inhuman or degrading punishment, and prohibition of slavery and forced labour; right to liberty and security of the person and prohibition of arbitrary arrest or detention; right to freedom & movement; right to equality before the law courts; and right to privacy, freedom of religion and expression. It prohibits propaganda for war but gives right to peaceful assembly & association. The covenant also makes provision to the entitlement of protection of

[38] See, ADM, Jabalpur v.Shivakant Shukla, (1976) 2 SCC 521. The Supreme Court in Ram Deo Chauhan v. Bani Kant Das, (2010) 14 SCC 209 has admitted that ADM Jabalpur v. Shivakant Shukla violated human rights of citizens. This case has been overruled in K.S Puttaswamy v. Union of India, (2017) 10 SCC 1 (9 Judge Bench). The other judgement, Union of India v. Bhanudas Krishna Gawde,(1977) 1 SCC 834: 1977 SCC (Cri) 208, which followed ADM, v. Jabalpur or Habeas Corpus decision was also overruled.
[39] LOYD'S 'INTRODUCTION TO JURISPRUDENCE' [5th ed. 1985 at 145.]

Electronic copy available at: https://ssrn.com/abstract=4221073

family from society and the State, right of a child to protection and nationality. Citizens have a right to participate in the governance of the State[40].

5.8.1 Implementation mechanism

The States Parties to the Covenant on Civil and Political Rights undertake to submit reports on the measures adopted by them to give effect to the rights recognised by the covenant and on progress made on their enjoyment. These reports are to be submitted to the Secretary General of the UN who shall transmit them to the human Rights Committee[41].

5.9 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Covenant on Economic, Social and Cultural Rights is composed of a preamble and 31 articles divided in five parts. It provides for the right of self- determination for all peoples. This right permits them to determine their political status and purse their economic, social and cultural development. In no case may a person be deprived of his or own means of subsistence[42]. The States parties to the covenant are required to implement the provisions of the covenant by legislation and other methods. Since the implementation of economic rights involves the economic resources, and such resources of developing States might be limited, it gives power to such States to determine the extent of the guarantee of such rights to non-nationals. These rights can be subjected to such legislative limitations as are compatible with this covenant and promote general welfare in a democracy[43]. It recognises the right to work[44]; the right to enjoyment of just and fair conditions of work including fair wages, equal remuneration for equal work, decent living for workers & their families, equal opportunity, rest, leisure and reasonable working hours with paid public holidays[45].The covenant takes a pledge from the States Parties to ensure right of workers to form trade unions and protects the right to strike[46]. Right to social security with social insurance is recognised in Art.9 widest possible protection and assistance is to be given to the natural and fundamental group and unit of society known as family[47]. Part IV of the covenant makes provisions for reports by the

[40] Art. 1-27.
[41] Consolidated guidelines for State reports have been revised by the Committee in 2010 (CCPR/C/2009/1 of 22 Nov 2010).
[42] Art. 1, Covenant on Economic, Social and Cultural Rights.
[43] Art.2 and 4.
[44] Art.6
[45] Art.7
[46] Art.8
[47] Art.10

Electronic copy available at: https://ssrn.com/abstract=4221073

parties to the UN Secretary General concerning the achievement and observance of the rights listed in the covenant. It also contains provision for further action by the UN, especially the ECOSOC and the HRC on the basis of these reports.

The ECOSOC has taken various steps to make its role effective. It laid down various procedures for the implementation of the covenant in 1976. A working group was established in 1978 which in 1985 was transformed into a committee on ECOSOC and Cultural Rights to assist the ECOSOC in fulfilling its monitoring responsibilities under the covenant. Part V of the covenant[48] deals with signatures, ratification and accession.

5.9.1 Machinery for Implementation

A State Party to the covenant has a clear obligation to submit periodic reports to the Secretary General who shall transmit copies to the ECOSOC[49] Such information can be furnished to the UN or to any specialised agency. Besides the Secretary General, the reports are dealt with by the ECOSOC and its committee on Economic, Social and Cultural Rights, concerned specialised agency and the General Assembly[50]. The reports submitted by the State Parties should indicate the extent to which a State has been implement the rights of the covenant. These reports are commented upon by other States Parties as well as by the relevant specialised agencies. After taking into account all these comments, the Committee on Economic, Social and Cultural Rights makes recommendations. The ECOSOC also sends periodic reports to General assembly with its recommendations. The covenant makes provision for making further treaties for achieving the rights given in the covenant.

ECOSOC as a principal organ of the UN is to coordinate economic, social and related work of the UN specialised agencies, Functional commissions and Regional Commissions. It is a central forum for discussion on global economic and social issues and for formulating policy recommendations addressed to member States and the UN system. It is responsible for

1. Promoting higher standards of living, full employment, economic and social progress.
2. Identifying solutions to the international economic, social and health problems.
3. Facilitating international cultural and educational cooperation and

[48] Art. 26-31.
[49] Art.16.
[50] Art.17-21.

Electronic copy available at: https://ssrn.com/abstract=4221073

4. Encouraging universal respect for human rights and fundamental freedoms.

ECOSOC has power to make and initiate studies and reports on the above issues. The council's purview extends over 70 per cent of human & financial resources of the entire UN system.

International Covenant on Civil and political Rights, 1966:

General- Art.1- of the Universal Declaration provide that all human beings are born free and equal in dignity & rights. They are endowed with reason & conscience and should act toward one another in a spirit of brotherhood. Art.1 thus proclaims the inherent freedom and equality in dignity and rights of all human beings.

According to Art.2, everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The civil and political rights enumerated under the Declaration include the following:

1. *Right to life, liberty and security of person.*[51]
2. *Prohibition of slavery and slavery trade.*[52]
3. *Prohibition of torture, cruel, inhuman or degrading treatment or punishment.*[53]
4. *Right to be recognized as a person before law.*[54]
5. *Equality before the law and equal protection of law against any discrimination in violation of the Declaration.*[55]
6. *Right to effective remedy by the competent national tribunals*[56].
7. *Prohibition of arbitrary arrest, detention or exile.*[57]
8. *Right to be full equality to a fair & public hearing by an independent and impartial tribunal.*[58]
9. *Right to be presumed innocent until proved guilty according to law in public trial.*[59]

[51] Art.3.
[52] Art.4.
[53] Art.5.
[54] Art.6.
[55] Art.7.
[56] Art.8.
[57] Art.9.
[58] Art.10.
[59] Art.11, para1.

Electronic copy available at: https://ssrn.com/abstract=4221073

10. *Freedom from ex- post facto laws.*[60]
11. *Freedom from arbitrary interference with privacy, family, home, correspondence or attack on honour or reputation and right to protection by law against such interference.*[61]
12. *Right to freedom of movement and residence within the borders of State.*[62]
13. *Right to leave any country, including his own, and to return to his country.*[63]
14. *Right to seek and enjoy in other countries in other countries asylum from prosecution in respect of political crimes.*[64]
15. *Right to nationality.*[65]
16. *Freedom from arbitrary deprival of nationality and right to change nationality.*[66]
17. *Right to marry and to found a family and equal rights as to marriage, during marriage and at its dissolution.*[67]
18. *Right to own property and freedom from arbitrary deprival of property.*[68]
19. *Right to freedom of thought, conscience and religion.*[69]
20. *Right to freedom of opinion and expression.*[70]
21. *Right to freedom of peaceful assembly and association.*[71]
22. *Right to take part in the government of his country.*[72]
23. *Right to equal access to public service in his country.*[73]

5.10 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966:

Economic, Social and Cultural Rights are enumerated in Articles 22 to 27. They are.

1. *Right to social security and the right to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.*[74]

[60] Art.11, para 1.
[61] Art 12.
[62] Art.13, para 1.
[63] Art .13, para 2.
[64] Art. 14.
[65] Art.15, para 1.
[66] Art.15 para 1.
[67] Art 16 para 1.
[68] Art.17.
[69] Art 18.
[70] Art.19.
[71] Art.20.
[72] Art.21, para 1.
[73] Art. 21 para 2.
[74] Art.22.

Electronic copy available at: https://ssrn.com/abstract=4221073

2. *Right to work, free choice of employment, just and favourable conditions of work and protection against unemployment.*[75]
3. *Right to equal pay for equal work.*[76]
4. *Right to just and favourable remuneration.*[77]
5. *Right to form and to join trade union.*[78]
6. *Right to rest and leisure.*[79]
7. *Right of living adequate for the health and well-being of himself and his family.*[80]
8. *Right of all children to enjoy same social protection.*[81]
9. *Right to education.*[82]
10. *Right of parents to choose the kind of education for their children.*[83]
11. *Right to participate in cultural life of the community.*[84]
12. *Right to protection of moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*[85]

5.10.1 Overview of Civil and Political Rights:

5.10.1.1 Right to Life:

The Right to Life is the "Supreme Right" from which no derogation is permitted even in time of public emergency. It is basic to all human rights. In other words, if a person exists, then only can (s) he exercise all other rights. It is a right which should not be interpreted 'narrowly'.

5.10.2 Brief Overview of International Human Rights Law Provisions Relating to Right to Life:

The Universal Declaration of Human Rights 1948, proclaims that everyone has the right to life,

[75] Art.23, para 1.
[76] Art. 23, para 2.
[77] Art. 23 para 3.
[78] Art. 23 para 4.
[79] Art.24.
[80] Art.25, para 1.
[81] Art .25, para 2.
[82] Art .26, para 1.
[83] Art 26, para 3.
[84] Art 27, para 1.
[85] The Universal Declaration of Human Rights, 1948. Art27, para 2

Electronic copy available at: https://ssrn.com/abstract=4221073

liberty and the security of person.[86] Though UDHR is not legally binding, an impressive array of conventions were subsequently adopted under auspices of the United Nations which seek to guarantee different facts of right to life or right to life certain groups, i.e. racial, ethnic minorities and children. The Convention on the Prevention of Punishment of the Crime of Genocide 1948, prohibits the killing of members of a national, ethnic, racial or religious group with the intent to destroy the group in whole or in part.[87]

The International Covenant on Civil and Political Rights 1966 asserts that every human being has the inherent right to life. No one shall be arbitrarily deprived of his life. The right to life, mentioned in the International Covenant on Civil and Political Rights 1966 is one of the non-derogable rights.[88] Thus even in times of a public emergency, states cannot derogate from their obligation to protect the right to life under art.6 This article refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable.

The Second Optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989, urges states parties to take all necessary measures to abolish the death penalty and stipulates that no reservation is admissible except for the application of the death penalty for most serious crimes of a military nature committed during war time.[89]

The International Covenant on Economic, Social and Cultural Rights 1966 seeks to protect the right to food, water, healthcare, etc., which are necessary for life.

Every child has the inherent right to life & there is an obligation cast on the states parties to the convention on the Rights of the Child 1989 (CRC), to ensure to the maximum extent possible the survival and development of the child. It further requires that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed

[86] See the UDHR 1948, art 3.

[87] Convention on the Prevention and Punishment of the Crime of Genocide(1948), art II: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:

a) Killing members of the group.
b) Causing serious bodily or mental harm to members of the group.
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
d) Imposing measures intended to prevent births within the group.
e) Forcibly transferring children of the group to another group.

[88] Ibid, art 6(6).

[89] The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of death penalty (1989), art 2.

Electronic copy available at: https://ssrn.com/abstract=4221073

by persons below 18 years of age addition, other articles of this convention stress the right to survival of children through provision of essential food, water, healthcare etc. necessary for life. In the Barcelona Traction case, the International Court of Justice significantly made "an essential distinction" between "the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection"[90] It added that by "their very nature the former are the concern of all States", and, in "view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes". In the view of the Court, such "obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination". It added that whilst some "of the corresponding rights of protection have entered into the body of general international law; others are conferred by international instruments of a universal or quasi-universal character". *Pretty v United Kingdom* [2002][91] The European Court of Human Rights found that the right to life does not create a right to choose death rather than life. It meant there was no right to die at the hands of a third person or with the assistance of a public authority. *Osman v the United Kingdom* (1998)[92] The European Court of Human Rights found that the police had not failed in their duty under Article 2 to safeguard the father's right to life. There was insufficient proof that the teacher posed a real and immediate threat to life which the police knew about or ought to know about. The positive obligation to safeguard life must not impose an impossible or disproportionate burden on public authorities.

5.10.3 Freedom From Torture:

Torture seeks to destroy the human spirit. It deliberately attacks the physical & emotional well-being of individuals and in some cases, the dignity & will of entire groups. It leaves long lasting physical & psychological effects amongst victims. Though the human rights standards, which have evolved over past 50 years or so, prohibit it under any circumstance, yet it is practiced in many countries of the world. Though traditionally perceived as ill treatment in an interrogation

[90] Barcelona Traction, Light and Power Company, Limited, Judgment, ICJ Reports 1970, p. 32, para. 33

[91] Pretty v. United Kingdom [2002] ECHR 2346/02. A woman suffering from an incurable degenerative disease wanted to control when and how she died. To avoid an undignified death, she wanted her husband to help her take her life. She sought assurance that he would not be prosecuted.

[92] Osman v. United Kingdom [1998] ECHR 101. A teacher had developed an unhealthy interest in one of his pupils that included following him home, locking him in a classroom, vandalising his home and victimising his school friend. The teacher's behaviour was reported to the headmaster and to the police. The teacher subsequently and unexpectedly shot the pupil and his father, injuring the pupil and killing his father.

Electronic copy available at: https://ssrn.com/abstract=4221073

room. It is absolutely forbidden to subject any person to torture or to any treatment or punishment that is inhuman or degrading. Public authorities have an obligation to prevent such treatment, to investigate any allegations of such treatment, and to protect vulnerable individuals who they know or should know are at risk of such treatment. *OOO (and others) v Commissioner of Police for the Metropolis* (2011)[93] The High Court found that the Metropolitan Police had failed to take operational measures to protect victims of human trafficking, and had failed in their investigative duty under Article 3 after they received credible complaints of the alleged abuse. The claimants were awarded damages of £5,000 each.

5.10.3.1 International Standards:

Several international conventions, guidelines and rules exist to ensure humane treatment for prisoners. The UDHR, 1948 declares that no one will be subjected to arbitrary arrest detention or exile, besides guaranteeing a right to life. & right to be free from torture or cruel, inhuman or degrading treatment or punishment. The ICCPR guarantees the right to liberty & security of persons. It further declares that all persons deprived of their liberty shall be treated with humanity & with respect for the inherent dignity of human person.

The Human Rights Committee held that this provision supplements the provisions of the ICCR on torture. For all persons deprived of their liberty, the prohibition of treatment contrary to the provisions of the ICCPR on prohibition of torture is supplemented by the positive requirement of the ICCPR that they will be treated with humanity & with respect for the inherent dignity of the human person.

5.10.3.2 Right to Minimum Wages:

Prisoners, like other workmen, are also entitled to minimum wages. Contemporary criminal jurisprudence confers upon the state the duty to pay minimum wages to all prisoners for the work they do.[94]

[93] OOO (and others) v Commissioner of Police for the Metropolis [2011] England &Wales HC 1246. This case was brought by four young Nigerian women who were brought to England illegally, made to work in conditions of servitude and subjected to physical and emotional abuse that amounted to inhuman and degrading treatment.
[94] State of Gujarat v Hon'ble Court of Gujarat AIR 1998 SC 3164, (1998) 7 SCC 392.

Electronic copy available at: https://ssrn.com/abstract=4221073

5.10.3.3 Right to Information:

The right of a detenue to send his book, which was written during detention, for publication has been recognised. The press may also interview prisoners though it is established that the right to information is not an absolute right.[95]

5.10.3.4 Pre- Trial Release:

Pre- Trial release on personal bond, i.e. without surety may be allowed where the person to be released on bail is indigent & there is no substantial risk of his absconding. So long Supreme Court is not in a position to hear appeal of an accused within reasonable period of time, the court should ordinarily, unless there are cogent grounds to act otherwise, release the accused on bail in the cases where special leave has been granted to the accused to appeal against his conviction & sentence.[96]

5.10.3.5 Right to Fair Trial:

The Universal Declaration of Human Rights 1948 declares that everyone is entitled in full equality to fair and public hearing by an independent impartial tribunal, in the determination of his rights & obligations and of any criminal charge against him.[97] It also guarantees the presumption of innocence until proven guilty & prohibition against ex-post facto application of penal laws.

The ICCPR reiterates the provisions of the Universal Declaration of Human Rights 1948 & also contains further detailed provisions on the elaboration of the right to fair trial. In the determination of any criminal charge, everyone shall be entitled to the following minimum guarantees, in full equality:

1. To be informed promptly and in detail in a language which he understands of the nature & cause of the charge against him.
2. To have adequate time & facilities for the preparation of his defence and to communicate with counsel of his own choosing.
3. To be tried without undue delay.

[95] Prabha Dutt v Union of India AIR SC 6, (1982) 1 SCC1.
[96] Kashmira Singh v State of Punjab AIR 1977 SC 2147, (1997) 4 SCC 291.
[97] The UDHR 1948, art .10.

Electronic copy available at: https://ssrn.com/abstract=4221073

4. To be tried in his presence & to defend himself in person or through legal assistance, of this right and to have legal assistance assigned to him, in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it.
5. To examine, or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
6. To have the free assistance of an interpreter if he not able to understand or speak the language used in court.
7. Not to be compelled to testify against himself or to confess guilt.[98]

5.10.3.6 Economic, Social and Cultural Rights

Right to Work:

The Universal Declaration of Human Rights 1948 asserts, that everyone has the right to work, to the free choice of employment, to just and favourable conditions of work and to protection against unemployment. It declares that everyone has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay.

The International Covenant on Economic, Social & Cultural Rights 1966 refers to the right of everyone to have the opportunity to gain his living by work which he freely chooses or accepts. States parties are obliged to take steps which include technical & vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.The International legal Standards closely related to bonded labour:

Article 4 of the Universal Declaration of Human Rights 1948 states that, No one shall be held in slavery or servitude, slavery & the slave trade shall be prohibited in all their forms.

The UN Supplementary Convention on the Abolition of Slavery (1956) defines debt bondage as the status or condition arising from a pledge by a debtor of his personal service or those of a person under his control as a security for a debt, if the value of those service as reasonably

[98] See the International Covenant on Civil and Political Rights (1966), art.14.

Electronic copy available at: https://ssrn.com/abstract=4221073

assessed is not applied toward the liquidation of the debt or the length & nature of those services are not respectively limited & defined.

In the Bandhua Mukti Morcha case, the Supreme Court held that whenever it is shown that a labourer is made to provide forced labour, the court would raise the rebuttable presumption that he is required to do so in consideration of an advance or other economic consideration received by him & he is, therefore, bonded labour. The bonded labourers must be identified and released and on release they must be suitably rehabilitated. Any failure on the part of the state government in implementing the provisions of the Bonded Labour System (Abolition) Act 1976 would be violation of arts 21 &23 of the Constitution of India. Whenever a person was forced to provide labour for no remuneration or nominal remuneration, the presumption would be that this was a bonded labour, unless the employer or state government was in position to prove otherwise.[99]

5.10.3.6.1 Sexual Harassment of Women at Work Place:

In a landmark judgement in Vishaka v State of Rajasthan[100] the Supreme Court laid down detailed guidelines and norms. It further paved the way for setting up a complaints mechanism system which makes it mandatory for every organisation (government, private, industrial or educational) to constitute a sexual harassment complaints committee. In the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality & guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places or institutions, the vishaka guidelines are to be treated as the law under art 141 of the Constitution which states that the law declared by the Supreme Court shall be binding on all courts.

5.10.3.6.2 Right to form and Join Trade Unions:

The International Covenant on Economic, Social & Cultural Rights 1966 guarantees the right of everyone to form trade unions and join the trade union of his choice,[101] which is closely linked to the right to freedom of association. It also provides for a right not to be compelled to join a particular trade union. In addition, it provides for the right to strike, which is crucial for

[99] Bandhua Mukti Morcha v Union of India and Others [1984] 2 SCR 67.
[100] Vishaka v State of Rajasthan (1997) VII AD SC 53, AIR 1997 SC 3011.
[101] The International Covenant on Economic, Social & Cultural Rights (1966), art 8.

Electronic copy available at: https://ssrn.com/abstract=4221073

protecting the rights of workers. This right is subjected to a number of limitations based on national security, public order and rights and freedoms of others.

5.10.3.6.3 Right To Social Security and Social Insurance:

The International Covenant on Economic, Social and Cultural Rights, 1966 recognises the right of everyone to social security, including social insurance. These are required for old persons, the disabled or persons suffering from ill health or other situations which do not allow them to earn a decent living. The Committee on Economic, Social & cultural Rights, which oversees the implementation of International Covenant on Economic, Social & Cultural Rights 1966, was concerned about the enjoyment and has given general comments to guide the states parties in this regard.

5.10.3.6.4 Right to Protection and Assistance for Families:

The International Covenant on Economic, Social and Cultural Rights, 1966 provides protection for the family, mothers and children. It includes the right to enter freely into marriage with the free consent of the intending spouses.

5.10.3.6.5 Right To Adequate Standard of Living:

The International Covenant on Economic, Social and Cultural Rights, 1966 recognises the right of everyone to an adequate standard of living for himself & his family, including adequate food, clothing & housing. This also includes a right to the continuous improvement of living conditions. It recognises the fundamental right of everyone to be free from hunger and requires states parties to take measures which include improving methods of production, conservation and distribution of food.

5.10.3.6.6 International Standards:

Besides, right to life, The Universal Declaration of Human Rights, 1948 proclaims right to adequate standard of living which includes the right to food. The UN standard Minimum Rules for the Treatment of Prisoners 1955 recognises prisoners' rights to food and water provisions. The International Covenant on Economic, Social and Cultural Rights recognises the right of

Electronic copy available at: https://ssrn.com/abstract=4221073

everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.[102] The Second Additional Protocol to the Geneva Conventions of 12 August 1949 prohibits starvation of civilians as a method of combat.[103] The Convention on Elimination of all forms of Discrimination against Women 1979 includes adequate nutrition as part of an adequate standard of living.[104] The Convention on the Rights of the Child 1989 obliges states parties to take steps toward ending child and infant mortality, and eliminate the circumstances that lead to child death including illness and malnutrition.

5.10.3.6.7 Regional Protection of Human Rights:

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

The European Convention on Human Rights (ECHR) protects the human rights of people in countries that belong to the Council of Europe. All 47 Member States of the Council, including the UK, have signed the Convention. Its full title is the 'Convention for the Protection of Human Rights and Fundamental Freedoms'.

The Council of Europe was founded after the Second World War to protect human rights and the rule of law, and to promote democracy. The Member States' first task was to draw up a treaty to secure basic rights for anyone within their borders, including their own citizens and people of other nationalities.

Originally proposed by Winston Churchill and drafted mainly by British lawyers, the Convention was based on the United Nations' Universal Declaration of Human Rights. It was signed in Rome in 1950 and came into force in 1953.

5.10.3.6.8 The Convention secures:

- the right to life (Article 2)
- freedom from torture (Article 3)
- freedom from slavery (Article 4)

[102] Convention on the Economic, Social and Cultural Rights (1966), art11.
[103] The Protocol Additional to the Geneva Conventions dated 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts (Protocol II 1977), art 14.
[104] The Convention on Elimination of All Forms of Discrimination against Women (1979), art 14.

Electronic copy available at: https://ssrn.com/abstract=4221073

- the right to liberty (Article 5)
- the right to a fair trial (Article 6)
- the right not to be punished for something that wasn't against the law at the time (Article 7)
- the right to respect for family and private life (Article 8)
- freedom of thought, conscience and religion (Article 9)
- freedom of expression (Article 10)
- freedom of assembly (Article 11)
- the right to marry and start a family (Article 12)
- the right not to be discriminated against in respect of these rights (Article 14)
- the right to protection of property (Protocol 1, Article 1)
- the right to education (Protocol 1, Article 2)
- the right to participate in free elections (Protocol 1, Article 3)
- the abolition of the death penalty (Protocol 13)

6.0 THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights applies and protects the rights and guarantees set out in the European Convention on Human Rights. The ECHR was established in 1959, following the adoption of the European Convention on Human Rights in 1950 by the Council of Europe, of which the United Kingdom is a member. The Court is based in Strasbourg, France and is not a European Union body. There are 47 Judges (one for every member state of the Council of Europe), divided into 5 sections. Each section has its own President, Vice President and other Judges. The Judges sit as a Chamber within a given section. Each Judge sits for a term of 9 years.

Thus The European Court may have following three types of jurisdiction:

1. Inter-State cases (Art 33)
2. Individual application (Art.34)
3. Advisory Opinions(Art.47)[105]

[105] V.S MANI, "REGIONAL APPROCHES TO THE IMPLEMENTATION OF HUMAN RIGHTS", IJIL, VOL.21, No.1 (1981), at 96.

Electronic copy available at: https://ssrn.com/abstract=4221073

6.1 AMERICAN CONVENTION ON HUMAN RIGHTS, 1969.

The OAS is an international organization created by the States of the Americas to achieve a regional order of peace and justice, promote solidarity, and defend their sovereignty, territorial integrity, and independence (Article 1 of the OAS Charter). Since the creation of the OAS, the States of the Americas have adopted a series of international instruments that have become the normative basis of the regional system for the promotion and protection of human rights, through the recognition of these rights, the establishment of obligations aimed at their promotion and protection, and the creation of organs to oversee their observance. The current system formally started with the adoption of the American Declaration of the Rights and Duties of Man at the Ninth International Conference of American States, held in Bogotá in 1948, during which the Charter of the OAS (hereinafter "the Charter") was adopted, promoting the "fundamental rights of the individual" as one of the principles on which the Organization is founded. The Charter was amended in 1967 at the Third Special Inter-American Conference held in Buenos Aires and in 1985 by means of the "Protocol of Cartagena de Indias", signed during the 14th special session of the Organization's General Assembly. The Protocol of Washington (1992) made additional changes and established that one of the fundamental purposes of the OAS is to promote, through cooperative action, the economic, social and cultural development of the Member States and to help eradicate extreme poverty in the hemisphere. Full respect for human rights is enshrined in various sections of the Charter, reaffirming the importance that the Member States attribute to it. Accordingly, the Charter emphasizes that "the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man." The Charter establishes that the IACHR is a principal organ of the OAS, whose function is to promote the observance and protection of human rights and to serve as a consultative organ of the OAS in human rights matters.

Rights Recognized under the Convention:

1. The right to juridical personality. Art.3.
2. The right to life. Art.4.
3. The right to humane treatment. Art.5.
4. Freedom from slavery & involuntary servitude. Art.6.

Electronic copy available at: https://ssrn.com/abstract=4221073

5. Right to personal liberty. Art.7.
6. Right to affair trial. Art.8.
7. Right from ex post facto laws. Art.9
8. The right to compensation for miscarriage of justice. Art.10. etc.

7.0 AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS. 1981.

African Charter on Human & People's Rights, was adopted on June 27, 1981 and entered into force on Oct, 1986. Through the Preamble the States Parties being the member of the OAU recognize, on the one, hand that fundamental human rights stem from attributes of human beings, which justifies their international protection & on the other hand that the reality & respect of people's right should necessarily guarantee human rights.

Out of the African Union's 55 Member States, 30 have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights. The Court has jurisdiction to hear complaints concerning human rights violations allegedly committed by any one of those States, when those complaints are submitted by the African Commission, a State party, or an African intergovernmental organization. Those 30 States are: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, and Uganda. In addition, eight States have authorized the Court to hear complaints presented by individuals and non-governmental organizations with observer status before the African Commission. Those eight States are: Benin, Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Tanzania, and Tunisia. Rwanda withdrew its acceptance of this jurisdiction after having previously accepted it.

8.0 HUMAN & PEOPLE'S RIGHTS:

The Charter recognizes most of what are regarded universally accepted civil and political rights. The civil and political rights recognized in the Charter include the right to freedom from discrimination (Article 2 and 18(3)), equality (Article 3), life and personal integrity (Article 4), dignity (Article 5), freedom from slavery (Article 5), freedom from cruel, inhuman or degrading treatment or punishment (Article 5), rights to due process concerning arrest and

Electronic copy available at: https://ssrn.com/abstract=4221073

detention (Article 6), the right to a fair trial (Article 7 and 25), freedom of religion (Article 8), freedom of information and expression (Article 9), freedom of association (Article 10), freedom to assembly (Article 11), freedom of movement (Article 12), freedom to political participation (Article 13), and the right to property (Article 14).

The Charter also recognises certain economic, social and cultural rights, and overall the Charter is considered to place considerable emphasis on these rights. The Charter recognises right to work (Article 15), the right to health (Article 16), and the right to education (Article 17). The Charter is also understood to include a right to housing and a right to food as "implicit" in the Charter, particularly in light of its provisions on the right to life (Art. 4), right to health (Art. 16) and to development (Art. 22).

Duties: The Charter not only awards rights to individuals and peoples, but also includes duties incumbent upon them. These duties are contained in Article 29 and are as follows:

The duty to preserve the harmonious development of the family.

To serve the national community by placing both physical and intellectual abilities at its service.

- *Not to compromise the security of the State.*
- *To preserve and strengthen social and national solidarity.*
- *To preserve and strengthen national independence and the territorial integrity of one's country and to contribute to its defence.*
- *To work to the best of one's abilities and competence and to pay taxes in the interest of society.*[106]
- *To preserve and strengthen positive African cultural values and in general to contribute to the promotion of the moral well-being of society.*
- *To contribute to the best of one's abilities to the promotion and achievement of African unity.*

[106] African Convention on Human Rights. available at, https://www.ohchr.org/Documents/Publications/GuideMinorities6en.pdf. (visited on Sep 15, 2021).

Electronic copy available at: https://ssrn.com/abstract=4221073

9.0 CONCLUSION

Since 1945, human rights have developed into an issues of international significance. The UN framework has given human rights international recognition and devised a monitoring system for their protection. It has established universal norms and standards and internationalized standard- setting procedures.

However, some commentators such as Jack Donnelly have said that as far as implementation and enforcement of human rights are concerned, 'virtually nothing has been achieved'. Two reasons have been suggested for this. Firstly, states have developed a culture of non-compliance since commitment to human rights would require major domestic reform, entailing enormous time and effort. Secondly, many states believe that internal conditions should not be subject to the jurisdiction of the international community. A stronger human rights regime with a strong influence on the domestic affairs of states would be unacceptable to many state parties who are protective of their sovereignty.

Electronic copy available at: https://ssrn.com/abstract=4221073

BIBLIOGRAPHY

Books

1. Blackstone's, *International Human Rights Documents* (Universal Law Publishing, 1st Ed.2001)
2. D.D. Basu, *Human Rights & Constitution Law* (LexisNexis Publications, 24th Ed. 1944).
3. Harris, *Cases, and Materials on International Law* (Sweet & Maxwell Publications, 5th Ed, London 1998).
4. Justice V.R. Krishna Iyer, *Human Rights- A Judges Miscellany*(D.K. Publications, Delhi, 1995)
5. Malcolm N. Shaw, *International Law* (Cambridge University Press, Cambridge, 6th Ed. 2008).
6. V.D. Mahajan's, *Jurisprudence & Legal Theory* (Eastern Book Company, 5th Ed. Lucknow 2015).
7. Nirmal, Chiranjivi, *Human Rights in India: Historical, Social and Political Perspectives* (Oxford University Press, 1999).
8. Philip Alston and Ryan Goodman, *International Human Rights* (Oxford University Press, New Delhi 2006).
9. Dr. S.K. Kapoor, *International Law & Human Rights* (16th Ed, Central Law Agency, Allahabad 2007).
10. K.C. Joshi, *International Law & Human Rights* (Eastern Book Company, 3rd Ed. Lucknow 2016).
11. I. A. Shearer, Starke's, *International Law* (Oxford University Press, 11th Ed, New Delhi 1994).
12. Upendra Baxi, *Human Rights in a Posthuman World- Critical essays* (Oxford University Press, New Delhi, 2007).
13. Paras Diwan, *Human Rights and the Law* (Deep & Deep Publications, Delhi, 1998).
14. Justice Palok Basu, *Law Relating to Protection of Human Rights* (Modern Law Publications, Delhi, 1st Ed. 2002).
15. Tom CamBell, K.D Ewing and Adam Tomkins, *The Legal Protection of Human Rights* (Oxford Publication, 1st Ed. Newyork, 2011)

Electronic copy available at: https://ssrn.com/abstract=4221073

International Legal Instruments

1. Universal Declaration of Human Rights, 1948.
2. International Covenant on Civil & Political Rights, 1996.
3. International Covenant on Economic, Social & Cultural Rights, 1996.
4. League of Nations, 1919.
5. European Convention for the Protection of Human Rights & Fundamental Freedoms (1950).
6. American Convention on Human Rights, 1969.
7. African Charter on Human & People's Rights 1981.
8. Vienna Declaration & Programme of Action, 1993.
9. United Nations: The United Nations Charter, 1945.
10. Optional Protocol to the Covenant on Civil & Political Rights, 1966.
11. Second Protocol Aiming at the Abolition of Death Penalty, 1989.

Journal Articles/ Papers/ Theses

1. S.K. Bhosle. "*Concepts of Human Rights, origin & Evaluation of the concepts*". http://despace.vpmthane.org.
2. Dinah Shelton, *An Introduction to the History of International Human Rights Law (*Strasboug, France, July 2003).
3. Myres S. Mc Dougal, *Human Rights in The United Nations* (The American Journal of International Law).
4. Stephen P. Marks, *Human rights: A Brief Introduction* (Harvard University, 2017).
5. Stephen P. Marks, *The United Nations and Human Rights*
6. Roshni Duhan, *Human Rights Issues in India – A Mapping of Different Groups* (Innovare Journal of Social Science, 2014).
7. Vivek Dhupdale, *Enforcement of Human Rights at International & National level* (Shivaji University, Kolhapur, 2012).

Websites

- http://www.un.org/overview/rights.html.
- http://www.womenslinkworldwide.org/co_int_cedaw.html.
- www.hrea.org/learn/guides/UN.html.

Electronic copy available at: https://ssrn.com/abstract=4221073

- http://dspace.vpmthane.org.
- http://www.hrweb.org/history.html.
- https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20Children.pdf.

Electronic copy available at: https://ssrn.com/abstract=4221073